

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6621 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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HEIRS OF VAGHER MUSA JUMA

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioners
RULE SERVED for Respondent No. 1
M/S THAKKAR ASSOC. for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/08/98

ORAL JUDGEMENT

This petition under Articles 226 and 227 of the Constitution challenges the order dated 9.12.1994 (Annexure "A") passed by the Gujarat Revenue Tribunal in revision application No. TEN. 28 of 1994 and the order dated 31.7.1995 (Annexure "B") in review application No. 2 of 1995.

2. Respondent No. 5 herein had filed revision application No. TEN. 28 of 1994 which was allowed by the Tribunal (Coram : Member Mr P.V. Vyas) on

9.12.1994. The present petitions filed review application No. 2 of 1995. However, when the said review application came up for hearing on 31.7.1995, it was dismissed by the Tribunal (Coram : Member Mr K.D. Parmar) on the ground that Mr P.V. Vyas, the Member of the Tribunal who had delivered the aforesaid judgment and order dated 9.12.1994 had already retired and, therefore, the review application was not maintainable as held by the learned Single Judge of this Court in the case of Ex-Subedar, Shri Bhupatsingh Nanubhai Jethwa vs. The President, Sumer Sports Club, Jamnagar & Ors., 1995 (1) GLH 619. Hence, the petitioners filed the present petition for challenging the judgment and order dated 9.12.1994 in the revision application on merits and also the order dismissing the review application.

3. By the time the petition has come up for hearing, the judgment rendered by the learned Single Judge of this Court in Ex-Subedar's case (Supra) has already been overruled by the Division Bench of this Court in the case of Geetaben J. Patel vs. Deputy Collector of Ahmedabad, 1995 (2) GLH 279 and it is held that even if the learned Member who had delivered the judgment in a revision application has retired or expired, the review application can be heard and decided by his successor.

4. In view of the above legal position, the order dated 31.7.1995 dismissing the petitioners' review application No. 2/95 is hereby set aside and the matter is remanded to the Tribunal for a fresh decision on the review application on merits.

5. In view of the aforesaid course being adopted by this Court, interests of justice require that the ad-interim relief which was granted by this Court while admitting the petition on 4.9.1995 deserves to be continued for a period of three months from today, during which period the Tribunal shall hear as well as decide the review application on merits.

6. It is clarified that this Court has not at all gone into the merits of the review application.

7. The petition is allowed in terms of the aforesaid directions. Rule is made absolute.

Direct Service is permitted.

Sd/-

August 13, 1998 (M.S. Shah, J.)